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AUG 09 2011

OFFICE OF PETITIONS

In re Application of	:	
Banta et al.	:	
Application No. 09/876,782	:	ON APPLICATION FOR
Filed: June 7, 2001	:	PATENT TERM ADJUSTMENT
Atty Docket No. US010388	:	

This is in response to the Request for reconsideration of the patent term adjustment determination under 37 U.S.C. § 154(b)(3)(B) and 37 CFR 1.705(b), filed April 25, 2011. Applicants submit that the patent term adjustment to be indicated on the patent is one thousand two hundred fifty-eight (1258) days, not one thousand two hundred two (1202) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment.

The application for patent term adjustment is **DISMISSED**.

On January 25, 2011, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 1202 days. Applicants dispute the adjustment of 1260 days associated with the mailing of a non-final Office action on January 18, 2006, and instead argue a 1258 day adjustment should have been entered, pursuant to 37 CFR 1.702(a)(1).

Applicants' argument has been considered, but not found persuasive. Pursuant to 37 CFR 1.703(a)(1), the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35

U.S.C. 151, whichever occurs first. Therefore, the period of adjustment begins on August 8, 2002, the day that is after the date that is 14 months after the application was filed, and ends on January 18, 2006, the date the non-final Office action was mailed, and is 1260 days. The Office properly entered 1260 days in connection with the delay in mailing the January 18, 2006 non-final Office action.

It appears that applicants' determination of the patent term adjustment fails to take into consideration the 58 day reduction in connection with the June 15, 2006 reply to the January 18, 2006 non-final Office action. In accordance with 37 CFR 1.704(b), the period of adjustment of the term of the patent was properly reduced by 58 days, counting the number of days in the period beginning on the day after the date that is three months after the mailing date of the non-final Office action, April 19, 2006, and ending on the date the reply was filed, June 15, 2006.

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance remains 1202 days -- 1260 days of Office delay - 58 days of Applicant delay.

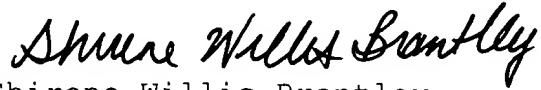
The Office acknowledges receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b). No additional fees are required.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of fee address (form PTO/SB/47) and a request for customer number (form PTO/SB/125) should be filed in accordance with Manual of Patent Examining Procedure, section 2540. A courtesy copy of this decision is being mailed to the address on the petition. However, the Office will mail all future correspondence solely to the address of record.

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3230.

A handwritten signature in black ink, reading "Shirene Willis Brantley". The signature is written in a cursive, flowing style.

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

CC: YAN GLICKBERG
PHILIPS INTELLECTUAL PROPERTY & STANDARDS
595 MINER ROAD
CLEVELAND OH 44143